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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 In re:	Case No. 09-51900 ASW
11 BENYAM and PAULA R. MULUGETA,	Chapter 11
12 Debtors.	Date: May 8, 2014
	Time: 10:30 a.m.
	Place: Courtroom 3020

14 **U.S. TRUSTEE'S OBJECTION TO DEBTORS' COMBINED PLAN OF**
15 **REORGANIZATION AND DISCLOSURE STATEMENT (4/2/14)**

17 The United States Trustee (the "UST") hereby files the following objections to the
18 Combined Plan of Reorganization and Disclosure Statement (4/2/14) ("Plan") herein by Benyam
19 and Paula Mulugeta ("Debtors").

20 1. On page 3, the estimated arrears for Class 1e are stated incorrectly – the amount
21 should be \$18,105.24, not 418,105.24.

22 2. Do the Debtors have an order valuing the Class 1f secured claim of California
23 Mortgage & Realty at \$135,046?

24 3. Is there an order stripping the lien of Class 1g? Also, this stripped claim of \$700,000
25 is not included in the chart of Class 2(b) unsecured claims.

26 4. At page 6, Debtors reference a Compromise Agreement covering Classes 1h, 1i and
27 1j. This Compromise Agreement is not on file in the case.

1 5. The UST has not analyzed whether all unsecured claims are properly included and
2 reconciled in Class 2(b). The Debtors should ensure that all scheduled and filed claims are
3 properly accounted for in the Plan.

4 6. The Debtors are, once again, delinquent in filing their MORs – the January, February
5 and March MORs are past due.

6 7. The Debtors optimistically state in Exhibit 3 that they will have gross business and
7 employment income of \$10,000 and \$3,000 per month, respectively. But this is not borne out
8 by the facts as reflected in the MORs. The last MOR filed in the case (December 2013) lists
9 only rental income, plus \$1,013 labeled “cash received from sales.” In addition, the Debtors
10 project rental income of \$14,500 from the Harker property and their children, but the rents
11 reported in the December 2013 MOR for Harker are only \$3,000. Since the last three MORs
12 have not been filed, it is impossible for the Court, creditors or the UST to evaluate the Debtors’
13 current income and prospects for reorganization. The Debtors will need to demonstrate that they
14 can actually attain and maintain their projected income as part of their feasibility showing. *See*
15 *In re Pizza of Hawaii, Inc.*, 761 F.2d 1374, 1382 (9th Cir. 1985) (the purpose of section
16 1129(a)(11) – the feasibility requirement – is to prevent confirmation of visionary schemes
17 which promise more than can possibly be attained).

18 8. Exhibit 3 discloses that the Debtors’ daughter will contribute about \$83,000 towards
19 the payment of administrative claims on the Effective Date – again, Debtors will need to
20 demonstrate that their daughter has the intention and wherewithal to make this contribution.

21 9. The rents projected by the Debtors for their investment properties do not correlate
22 with the rents reported in the last MOR. Exhibit 5 lists the projected rent from Alma to be
23 \$6,000 – but the December 2013 MOR lists the scheduled rent as only \$3,500 (with the property
24 currently vacant). Exhibit 5 lists the rent from Chaucer to be \$5,000, but the last MOR schedules
25 the gross rent to be \$4,400 (with a \$2,200 vacancy factor). And Exhibit 5 projects the rent from
26 Sevier to be \$3,000, but the MOR reports the scheduled rent as \$2,500, with only \$1,500
27 collected. And even if fully rented, per Exhibit 5 the Chaucer and Sevier properties have
28 negative cash flow of \$1,779 -- why are the Debtors keeping these properties, to the detriment of

1 their other creditors? In addition, the rents actually received vs. the Debtors' optimistic projected
2 rents raises a big feasibility red flag.

3 10. This case is now over 5 years old, and the Debtors appear to have no chance of
4 confirming a feasible plan. They have misused and failed to properly segregate cash collateral
5 over the entirety of their chapter 11 case, and are habitually late in filing their MORs. Their last
6 MOR (December 2013) reports only \$1,030 in the bank. The UST urges the Court to convert or
7 dismiss this case, or alternatively, to set a hard deadline by which the Debtors must confirm a
8 plan.

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10 San Jose, California
11 Dated: May 1, 2014

Respectfully submitted,

12 TRACY HOPE DAVIS
13 UNITED STATES TRUSTEE

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